Supreme Court, U.S.
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No. 01-1241

IN THE

Supreme Court of the United States

LIBERTY NATIONAL LIFE INSURANCE COMPANY,

Petitioner,

v.

ELLEN GAYLE MOORE, FANNIE McCONNELL, SPENCER WILLIAMS, and ANITA BOWERS, on behalf of themselves and all others similarly situated,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

REPLY BRIEF

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STATEMENT PURSUANT TO RULE 29.6

Petitioner Liberty National Life Insurance Company is wholly owned by Torchmark Corporation.

Respondents have little to say in response to the reasons for granting the writ offered by Petitioner. They raise two new points in their brief in opposition that require a reply, however.

First, in an attempt to avoid the direct conflict between the Eleventh Circuit and the Alabama Supreme Court on the question presented, Respondents have mischaracterized *Ex parte Grubbs*, 542 So. 2d 927 (Ala. 1989). Inexplicably, Respondents contend *Grubbs* did not involve a federal civil rights claim under 42 U.S.C. § 1983. *See* Br. in Opp'n at 4–5. The text of the *Grubbs* opinion belies this contention. True, the case arose, as a procedural matter, from a petition for a writ of mandamus to the Alabama State Bar Association. *See Grubbs*, 542 So. 2d at 928. But the petitioner's claim, as a substantive matter, alleged a violation of his federal civil rights under the Equal Protection Clause of the Fourteenth Amendment. *See id.* at 928, 931. The opinion indicates the Alabama Supreme Court considered that claim under 42 U.S.C. § 1983. *Id.* at 931. If there were any doubt on this matter, the Alabama Supreme Court recently removed it by reaffirming its holding in *Grubbs* that Alabama's 20-year rule of repose applies "in the context of a civil-rights violation claim under 42 U.S.C. § 1983." *Ex parte Liberty Nat'l Life Ins. Co.*, __ So. 2d __, 2002 WL 64651, at *4 (Ala. Jan. 18, 2002). The fact that the *Liberty National* opinion has not yet been released for publication does "not affect the precedential value of [the] opinion." ALA. R. APP. P. 53(e).

Second, Respondents' argument about accrual has no bearing on the question presented. Contrary to Respondents' argument (*see* Br. in Opp'n at 8–9), the Eleventh Circuit did not hold that application of Alabama's rule of repose would undermine the federal law of accrual. In fact, the court did

not even address that argument. The Eleventh Circuit did not discuss accrual because it recognized accrual is a statute of limitations concept that does not apply to the rule of repose. *See* Pet. App. 15a ("A statute of repose, however, limits the time within which an action may be brought and is not related to the accrual of any cause of action.") (internal quotation and emphasis omitted); *accord Liberty National*, __ So. 2d at __, 2002 WL 64651, at *4 (observing Alabama's rule of repose " 'limits the time within which an action may be brought and is not related to the accrual of any cause of action' ") (quoting 54 C.J.S. *Limitations of Actions* § 4 (1987)). Thus, Respondents' argument concerning accrual is not germane to whether the petition should be granted.

CONCLUSION

Respondents have offered no valid reason for denying the petition. The Eleventh Circuit's decision disregards Alabama's time limit barring the present litigation of ancient claims, and it aggravates the existing uncertainty over the scope of 42 U.S.C. § 1988(a). Petitioner asks this Court to grant its petition and review the decision below.

Respectfully submitted,

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